IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7302 OF 2005

Vasudeo Ramchand Ahuja .. Applicant.
Vs.
Vilas Shripati Kamble & Anr. .. Respondents.

Mr.P.A.Pol A.P.P. for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 6th JUNE, 2006

P.C.:

. Heard learned counsel for the parties.

2. The applicant in this application has prayed for leave to file appeal challenging the judgment and order dated 11.8.2005 acquitting the respondent-accused for the offence punishable under section 138 of the Negotiable Instruments Act. The case set up by the complainant-applicant is that during the period 2001-02 the accused had taken friendly loan of Rs.5,00,000/- from him in installment and in order to repay the same had issued the cheque in question, which came to be dishonoured when it was presented by the complainant. The defence propounded by the accused was that there was no legally enforceable debt on the date of presentation of the cheque and hence the complaint under section 138 is liable to be dismissed. A perusal of the judgment and

other material produced before me shows that no documents were produced on record to show that there was legally enforceable debt against the accused. The trial Court on appreciation of the evidence on record held that the complainant has failed to discharge initial burden and therefore the question of rebuttal of presumption by the accused does not arise. It is seen from the impugned judgment that the amount allegedly paid by the complainant during the period 2001-02 has not been reflected in the Income Tax returns as well as in the books of account. As a matter of fact the complainant has admitted that the said amount was not shown in the Income Tax returns and does not reflect in the books of account. In view of this the trial Court observed that the defence of the accused appears to be more probable. Considering the reasons recorded by the court below on appreciation of the evidence on record, in my opinion, the impugned judgment cannot be said to be unreasonable and perverse. The view taken by the trial Court is reasonably possible view. I, therefore, find no reason to grant leave to file appeal as prayed for by the petitioner. The application, therefore, fails and is dismissed as such.

(D.B.Bhosale, J.)